

EXHIBIT 14

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

RILEY GAINES, *et al.*

Plaintiffs,

V.

Case No. 1:24-cv-01109-MHC

NATIONAL COLLEGIATE

ATHLETIC ASSOCIATION, *et al.*

Defendants.

DECLARATION OF FIONA MCANENA

I, Fiona McAnena, declare as follows:

1. I am a resident of the United Kingdom, an adult over the age of eighteen, and am competent to testify and have personal knowledge of the facts stated in this declaration.

2. Fiona McAnena, Director of Campaigns, Sex Matters.

3. Sex Matters is a charity registered in England with objectives to:

promote human rights where they relate to biological sex, advance education about sex and the law, promote the sound administration of the law in relation to sex and equality in the law. These have been recognised as being in the public interest.

4. Sport is a key area where biological sex cannot be ignored. Sex Matters campaigns to ensure that the human rights of everyone are properly considered in the development of policy. In sport, this means a protected category

for women and girls on the basis of biology. College sport policy in the USA is an important and influential part of the global sports policy landscape. Sports scholarships in the USA are increasingly sought after by British students, both male and female, as a highly valuable way to access both sports development and a college education. *Gaines, et al. v. NCAA, et al.*, No. 1:24-cv-01109-MHC is therefore of interest to Sex Matters because of its relevance to British students as well as possible global impact.

5. Due to our own interest in this case Sex Matters has become aware of the Motion to Intervene filed by the National Women's Law Center (NWLC).

6. In the NWLC's Memorandum of Law in Support of Its Motion to Intervene (the "NWLC Memorandum"), NWLC states it supports trans identifying males competing in women's sports "as a matter of both civil rights law and of human rights." It goes on to state: "NWLC is not alone. The overwhelming majority of women's rights and gender justice organizations share the view that the inclusion of women and girls who are transgender in sports advances the goal of equal opportunity for women and girls to benefit from athletic participation." NWLC Memorandum, ECF No. 36-1, p. 10 of 32.

7. Sex Matters strongly disagrees with many of the factual assertions in the foregoing statement by NWLC.

7.1 Evidence shows that the vast majority of women in sport do not accept that males should be eligible for the female category. Sports which have consulted their members as part of policy reviews, and academic studies consulting elite female athletes across a range of sports and countries, consistently show 80-90% in favor of a protected female category. This is necessary for fairness and, in some sports, safety.

7.2 Opinion polls consistently show a majority of the general public in favor of single-sex spaces, services and sport, regulated not by gender identity but by birth sex.

7.3 There is no human right to participate in the sport category of your choice. All major human rights instruments refer to sex in biological terms and do not include trans-identifying males in the category of women. This includes, for example, the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), United Nations, 1979, the International Bill of Human Rights, and the International Convention of Civil and Political Rights.

7.4 The United Nations Special Rapporteur on violence against women and girls has expressed the view that an interpretation of Title IX that requires trans-identifying males to have access to women's sports teams is contrary to the obligations of the U.S. Government under international

human rights law and would lead to discrimination and serious physical, emotional and other harms to women and girls.

7.5 The body of published peer-reviewed studies and reviews shows that it is not possible to mitigate the effects of male puberty so as to remove male performance advantage in sport.

7.6 The United Kingdom Sports Councils, public bodies that are part of the UK government, commissioned an independent report on transgender inclusion which concluded that “the inclusion of transgender people into female sport cannot be balanced regarding transgender inclusion, fairness and safety in gender-affected sport where there is meaningful competition.” As a result, many sport governing bodies in the UK have reviewed their policies and restored a protected category for those or female or, in some cases, for those who have not experienced any part of male puberty.

8. My colleagues and I have been consulted by dozens of sports bodies on this issue. This includes international federations regulating sport at world level as well as many national federations.

9. NWLC claims that “[p]olicies excluding women and girls who are transgender from school sports harm not only those women and girls, but threatens all women and girls who excel in athletics, as well as all who depart from gender

stereotypes.” NWLC Memorandum, ECF No. 36-1, p. 11 of 32; *see also* p. 12 (“Categorical bans”).

10. We believe the opposite is true. Sporty women often depart from gender stereotypes. Same-sex attracted women are over-represented in sport, particularly team sports like soccer, rugby, cricket and hockey. Women and girls who excel in sport need male-free competition, because average males can outperform highly-talented females. Every women’s athletics world record, in every track and field event, has been beaten by a teenage boy. Every year, in every track and field event, and in every swimming race, hundreds of males across a range of ages post better performances than the world’s best by a female. This is not because female athletes lack talent but because female bodies are different from male bodies. Identity does not change that to any meaningful extent.

11. Second, there is no evidence of harm to women from sex verification which is undertaken via a cheek swab, a once-in-a-career test which provides fairness for all. This can be easily accomplished in private and has been for years without the sort of harms or difficulty that NWLC claims, and its statements otherwise amount to scare-mongering. . Surveys of elite female athletes show that most favour such sex verification.

12. NWLC claims that “[b]lack and brown women and girls who play school sports are at a particularly high risk of harm under these policies, because

Black and brown women are often viewed as ‘nonconforming’ with white-centric stereotypes of femininity.” NWLC Memorandum, ECF No. 36-1, pp. 11-12 of 32.

13. We reject this claim. Women of all ethnic backgrounds are female. This is not the same thing as conforming to stereotypes of femininity. As previously mentioned, successful women in sport have often been gender non-conforming. Black women in the UK make up c. 2% of the population and are over-represented in the UK’s sports teams. Success in sport is unrelated to sex stereotypes but female success requires a male-free category in almost all sports.

14. Just like NWLC, Sex Matters regularly contributes to public debate on single-sex policies in the UK, including sport. It advocates for human rights for all and points out where women’s rights are adversely affected by replacing rules based on biological sex with self-declared gender identity. Sex Matters has met with UK government ministers on sport and other issues relating to sex-based rights. It organized a major petition advocating for the definition of sex in UK equality law to be clarified, gaining sufficient public support for the petition to be debated in the UK parliament in 2023. Its spokeswomen are regular contributors to UK media. Members of its trustee board and advisory board have provided expert testimony to court cases in the USA and UK.

15. The NWLC has no more expertise, commitment to women, or involvement on issues pertaining to women in sport than Sex Matters does and

there is no reason to prefer NWLC as an advocacy organization or resource on women's issues over Sex Matters. Dr Emma Hilton, a Sex Matters trustee, is co-author of the most widely-cited paper on the question of whether male advantage in sport can be mitigated to permit males with a transgender identity to compete fairly in female categories. Together with two members of the Sex Matters advisory board, Dr Hilton was among the 26 academics who co-authored the recently-published peer-reviewed paper *The International Olympic Committee framework on fairness, inclusion and nondiscrimination on the basis of gender identity and sex variations does not protect fairness for female athletes*.

16. While the NWLC claims to have a “defense” that shares common questions of law or fact with the NCAA, this is not accurate in our view. The NWLC can no more be a defendant in this Title IX case to the claims being made by the Plaintiffs than our organization can be. As a UK-based charity, Sex Matters does not receive US federal funding and so like the NWLC is not covered by Title IX.

17. Sex Matters as an advocacy organization would be interested in becoming a party to this case just as the NWLC is seeking to do here. In the event that the NWLC were to be granted leave to intervene in this case, Sex Matters would also wish to consider intervening in this case.

18. The NWLC states it “has a substantial and longstanding interest in advocating for the equality of women and girls – including in athletics and access to sex-separated facilities ...[and] a strong interest in the proper interpretation of Title IX and the Equal Protection Clause on these topics.” NWLC Memorandum, ECF No. 36-1, p. 23 of 32. We, too, have these same interests. Moreover, as explained above, the NWLC does not adequately represent our interests or the interests of all women and girls. Nor does the NCAA or any other party represent our interests in these important issues. We raise the points made in this declaration for the benefit of the Court in considering the NWLC’s Motion and because, for the reasons explained above:

- a. The NWLC’s claims in its submission are in numerous respects inaccurate; and
- b. It would not be fair or just to allow one “women’s rights” organization to intervene as a party in this case when there is a broad spectrum of women’s rights organizations and the NWLC represents only one very narrow part of the spectrum.

19. Thank you for considering this testimony from Sex Matters.

I declare under the penalties of perjury under the laws of the United States of America that the foregoing representations are true and correct.

Executed on June 14, 2024.

/s/ Fiona Mcanena
Fiona Mcanena